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10/072,291	02/07/2002	Frank H. Copen	1796-AB-CIP	2654

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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,291

Applicant(s)

COPEN ET AL.

Examiner

Ruth C. Rodriguez

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 5 and 11-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 11 August 2003 has been considered for this Office Action.
3. The indicated allowability of claim 10 is withdrawn in view of the newly discovered reference(s) to Battersby. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience experienced by the Applicant for the prior indication of allowable subject matter.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Arnaldo. (US 4,991,413).

A theft deterrent device (1) is connected to an item of merchandise (2,3) to discourage shoplifting and is in combination with the item of merchandise (Fig. 1). The device comprises a first member (4), a second member (5), a hinge (6) and a lock (10). The hinge connects the first member and the second member and allows the members to move from an unlocked position to a locked position (Figs. 3 and 4). The lock is adapted to lock the first member to the second member in the locked position (Fig. 4). The members define at least first and second openings (7,7'). A portion of the item of merchandise is disposed in the openings and extending between the openings (Fig. 1). Portions of the first and second member disposed on opposite sides of the portion of merchandise to hold the first and second members to the item of merchandise (Fig. 1).

The first member has a jaw portion (4'). The second member has a jaw portion (5'). The jaw portions are adapted to be closed on the item of merchandise and the aligned openings are defined by at least one of the jaw portions (Figs. 1-4).

The first and second openings are aligned and coaxial (Figs. 1 and 2).

The first and second openings are offset (Figs. 1 and 2).

A theft deterrent device (1) is connected to an item of merchandise (2,3) to discourage shoplifting (Fig. 1). The device comprises a first member (4), a second member (5), a hinge (6) and a lock (10). The hinge connects the first member and the second member and allows the members to move from an unlocked position to a locked position (Figs. 3 and 4). The lock is adapted to lock the first member to the second

member in the locked position (Fig. 4). The members define at least first and second openings (7,7') receiving the item of merchandise such that the device is connected to the item of merchandise with a portion of the item of merchandise passing through the first and second openings (Fig. 1). The members define a third opening (13) and the third opening is perpendicular to the first and second openings (Figs. 1-4).

Each of the members defines jaw portions (Figs. 1-4). At least one of the jaw portions (5) of the members defines the first second and third openings (Figs. 1-4).

6. Claims 1- 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Costa. (US 5,119,652).

A theft deterrent device (1) is connected to an item of merchandise (15) to discourage shoplifting and is in combination with the item of merchandise (Figs. 2 and 3). The device comprises a first member (9), a second member (11), a hinge (10) and a lock (7,21). The hinge connects the first member and the second member and allows the members to move from an unlocked position to a locked position (Figs. 1-3). The lock is adapted to lock the first member to the second member in the locked position (Fig. 3). The members define at least first and second openings (Fig. 2). A portion of the item of merchandise is disposed in the openings and extending between the openings (Fig. 2). Portions of the first and second member disposed on opposite sides of the portion of merchandise to hold the first and second members to the item of merchandise (Figs. 1-3).

The lock includes four locking fingers (Figs.1 and 3).

The first member has a jaw portion and the second member has a jaw portion (Figs. 1-3). The jaw portions are adapted to be closed on the item of merchandise and the aligned openings are defined by at least one of the jaw portions (Figs. 1-3).

The first and second openings are aligned and coaxial (Figs. 1-3).

The first and second openings are offset (Figs. 1-3).

A theft deterrent device (1) is connected to an item of merchandise (15) to discourage shoplifting (Figs. 2 and 3). The device comprises a first member (9), a second member (11), a hinge (10) and a lock (7,21). The hinge connects the first member and the second member and allows the members to move from an unlocked position to a locked position (Figs. 1-3). The lock is adapted to lock the first member to the second member in the locked position (Fig. 3). The members define at least first and second openings receiving the item of merchandise such that the device is connected to the item of merchandise with a portion of the item of merchandise passing through the first and second openings (Fig. 2). The members define a third opening (26) and the third opening is perpendicular to the first and second openings (Figs. 1-3).

Each of the members defines jaw portions (Figs. 1-4). At least one of the jaw portions (5) of the members defines the first second and third openings (Figs. 1-4).

The lock includes four locking fingers and two second locking fingers (Figs. 1 and 3). Two of the first locking fingers engage each of the second locking fingers (Figs. 1 and 3).

Each of the locking fingers has opposite sides (Figs. 1-4). The first locking finger engage the opposite sides of the second locking fingers (Figs. 1 and 3).

7. Claims 10, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Battersby. (US 4,611,368).

A device (10) comprises a first member (12,63), a second member (11,62), a hinge (13,14,69,70), a lock (22,72) and loop (17,18). The hinge connects the first member and the second member and allowing the members to move from an unlocked position to a locked position (Figs. 1, 2 and 15-17). The lock is adapted to lock the first member to the second member in the locked position (Figs. 1 and 15). The second member defines a slot (Figs. 2 and 15). The loop has first and second ends (17,18). Each of the ends defines an opening (19,20). A portion of the loop is disposed in the slot defined by the second member such that the first and second ends are disposed adjacent the second member (Figs. 2 and 17). The first member carries a tooth (21) passing through the openings of the ends when the first member is in the locked position (Figs. 1, 2 and 15-17).

A device (10) comprises a first member (12,63), a second member (11,62), a hinge (13,14,69,70), a lock (22,72) and loop (17,18). The hinge connects the first member and the second member and allowing the members to move from an unlocked position to a locked position (Figs. 1, 2 and 15-17). The lock is adapted to lock the first member to the second member in the locked position (Figs. 1 and 15). The loop has first and second ends (17,18). One of the first and members carries a tooth (21) passing through the end of the loop when the first member is in the locked position to lock the loop to the first and second members (Figs. 1, 2 and 15-17).

Each of the ends of the loop defines an opening sized to receive the tooth (19,20).

***Allowable Subject Matter***

8. Claims 5 and 11-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments with respect to claims 1-4, 6-8 and 23 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sampson (US 2,625,725), Heaton et al. (US 4,649,397) and Vaux (US 4,827,577) are cited to show state of the art with respect to devices having some of the limitation of the current application.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (703) 308-1881. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115.

Submissions of your responses by facsimile transmission are encouraged. Technology center 3600's facsimile number for before final communications is (703) 872-9326. Technology center 3600's facsimile number for after final communications is (703) 872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Ruth C. Rodriguez  
Patent Examiner  
Art Unit 3677

rcr  
October 21, 2003

  
**ROBERT J. SANDY**  
PRIMARY EXAMINER